

Exhibit A

1

CBKAAMOOC Conference

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DASILVA MOORE,

4 Plaintiff,

5 v.

11 CV 1279 (AJP)

6 PUBLICIS GROUPE,

7 Defendant.

8 -----x

New York, N.Y.

November 20, 2012

9:30 a.m.

10 Before:

11 HON. ANDREW J. PECK,

12 Magistrate Judge

13 APPEARANCES

14 SANFORD HEISLER, LLP

15 Attorneys for Plaintiff

15 BY: SUSAN RUBENSTEIN

16 SANFORD WITTELS & HEISLER

17 Attorneys for Plaintiff

17 BY: SIHAM NURHUSSEIN

18 DEEPIKA BAINS

19 JACKSON LEWIS LLP

20 Attorneys for Defendant

20 BY: VICTORIA WOODIN CHAVEY

21 BRETT M. ANDERS

22 Also present: Dave Lewis, Ph.D.

23 Douglas Forrest, ILS

24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

CBKAAMOOC

Conference

1 do more Title VII discovery a second time around. This is
2 expensive enough and has taken up more than this case's share
3 of judicial resources and I don't want to do that. So, it's a
4 purported class.

5 Either there is class related discovery, not
6 individual plaintiff discovery that can go on now to establish
7 whether there is a common policy practice, whatever, that makes
8 what happened to everybody who worked for MSL appropriate or
9 there isn't. Or we're going to do limited discovery only as to
10 class issues and then have a class certification motion and I
11 am willing to listen to all of you or send you all away and
12 have you come back after you think about it but considering how
13 much money has already been spent, how many motions or
14 objections, whatever conferences both Judge Carter and I have
15 dealt with, I really do not want to go through this period
16 however we adjust it and then have you say, OK, then we're
17 going to do it all over again.

18 So, Ms. Rubenstein, if you have any thoughts on that
19 as you stand here --

20 MS. RUBENSTEIN: Thank you, your Honor.

21 We absolutely do and we welcome the Court's comments
22 because at least from where we sit we completely agree with
23 them. I am new to the case but having just entered the case at
24 a time when we now have 26 new named parties, you can see what
25 a nightmare it's become to try to figure out a way with which

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

CBKAAMOOC Conference

1 so that's OK. But, yeah, I would have given you warning had I
2 had a chance to read your papers beforehand but believe it or
3 not, you are not my only case and there are other things that
4 keep me busy all the time.

5 MS. RUBENSTEIN: Do you anticipate though hearing or
6 expecting to hear information or having a discussion about the
7 proposed protocol?

8 THE COURT: I mean it depends. Frankly, I have no
9 interest in going forward with predicative coding until we
10 figure out what you are going to do on class action. If the
11 answer is, you know, the existing proposals on the protocol
12 will suffice and there will be no requests for class related
13 discovery, if the class is certified, you know, in six months
14 or whatever your schedule calls for then we'll deal with the
15 protocol. If we're dealing with how to get a handle finally on
16 the limited amount of discovery necessary for an initial class
17 action determination, then we're probably not going to be
18 talking protocol because we are not doing two rounds of
19 predicative coding one for class and another for the
20 quote/unquote merits.

21 So I mean, seriously, if there are policies that are
22 applicable, sufficiently applicable to make all the people who
23 worked in a certain position at MSL to make that a class or a
24 group of subclasses or whatever, that's probably not going to
25 be based on anecdotal evidence per se as much as some sort of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

CBKAAMOOC

Conference

1 MR. BRECHER: I think 11, your Honor, fine by us.

2 THE COURT: OK. I guess the question is without
3 repeating everything in a nice free and stack of material
4 you've already given me what I am going to need to know in
5 advance is whether we are going to be talking ESI protocol or
6 whether we're still bogged down on the threshold question of
7 class type issues. If we are doing the ESI protocol I would
8 probably want Dr. Lewis to be here and his counterpart from
9 Recomind or whatever. If we're not doing that then he doesn't
10 have to be here.

11 And I need you all to get me that information in a
12 timely manner, not as part of a six inch stack which therefore
13 doesn't necessarily get read when there are other crises going
14 on and then I'll let you know otherwise. All I can say is you
15 are all burning money like it's going out of style. Have your
16 experts here and it may be meaningless and it may be
17 meaningful. But if you give me enough advance notice meaning,
18 at least a week in advance, then probably a week in advance Dr.
19 Lewis and I will be in the same place.

20 For the record, for the rest of you that the
21 Georgetown E-Discovery Conference.

22 The sooner you let me know what you're planning on
23 doing, the sooner I can deal with that. So that's all I can
24 tell you now.

25 MS. CHAVEZ: Judge, so you'd like to hear from us by
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

CBKAAMOOC Conference

1 December 7th then as to what we would expect, request the Court
2 to.

3 THE COURT: Yes. All it really needs to be is sort of
4 like an agenda list and whether you think we're going to get to
5 the ESI protocol question or not. Obviously, somewhere in
6 advance of the 14th any new information you each want me to
7 consider without going to multiple stacks of detachments and
8 all that, get in to me because I do prepare for conferences,
9 OK.

10 MS. RUBENSTEIN: We did not get a date. I just would
11 expect for the defendants to turnover the reports.

12 THE COURT: Monday after Thanksgiving.

13 MR. ANDERS: I can get it to them next week. It just
14 has to be put in final form. I just don't know the BIA
15 schedule. I should be able to get it to you by the end of next
16 week.

17 THE COURT: If not whatever you've got, even if it's a
18 draft, give it to them.

19 MR. ANDERS: It'll be fine.

20 THE COURT: Tuesday of next week. Certainly sooner if
21 possible.

22 All right. Usual drill. You all need to buy the
23 transcript from the reporter. Certainly, don't have to remind
24 but the rules about objections but, hopefully, we're not taking
25 any today and I'll see you on the 14th.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300